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T3504-908133**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patent Number: 6,142,532 )  
Issued: November 7, 2000 )  
Name of Patentee: Adrian Gluck )  
Title of Invention: MEMORABILIA CARD) )

VIA FACSIMILE  
IMMEDIATE ATTENTION  
REQUESTED

**REQUEST FOR RECONSIDERATION OF PETITION**

Commissioner for Patents  
Washington, D.C. 20231

Attention: Office of Petitions

Sir:

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DEC 02 2002

PETITIONS OFFICE

The owner of the above-identified patent hereby requests reconsideration of the October 24, 2002 decision dismissing the petition filed August 31, 2002. The October 24, 2002, decision incorrectly found that "Petitioner requests a change which will alter the term of the patent." On the facts of the present case, the change will not alter the term of the patent because the mistaken terminal disclaimer referred only to a patent having the same expiration date as the present patent. In addition to that fundamental factual error, the applicable law was incorrectly stated and applied. Thus, the proposed certificate of correction (copy attached hereto) should now be granted.

**The Requested Change Will Not Alter The Term of the Patent**

As acknowledged by the October 24, 2002, decision, the terminal disclaimer filed to overcome the examiner's rejection in the present case "inadvertently listed patent no.

5,417,431 rather than patent no. 5,803,501.” Decision, page 1. However, that inadvertent mistake was of an extremely minor character inasmuch as the ‘431 patent actually had the same expiration date as the present patent, with or without the mistaken terminal disclaimer.

Patent applications filed before June 8, 1995, receive the longer life of 20 years from the earliest referenced application filing date or 17 years from the issue date. For those applications filed on and after June 8, 1995, the patent term is 20 years from the earliest referenced application filing date. 35 U.S.C. § 154(c)(1)

Patent No. 6,142,532 was applied for after June 8, 1995, on September 8, 1998. It claims priority back to November 3, 1993. Its life is 20 years from the priority date, namely November 3, 2013.

Patent No. 5,417,431, which was mistakenly identified in the Terminal Disclaimer (rather than U.S. Patent No. 5,803,501), was filed before June 8, 1995 and, thus, its life is the greater of 20 years from the filing date or 17 years from the issue date. It was filed on November 3, 1993, and issued on May 23, 1995. Twenty years from the filing date is November 3, 2013, and 17 years from the issue date is May 23, 2012. Thus, November 3, 2013, is the expiration date of the ‘431 patent – the same as ‘532 regardless of any disclaimer.

U.S. Patent No. 5,803,501 was the subject of the examiner’s obviousness-type double patenting rejection and, as the decision concedes, was obviously meant to be the subject of the terminal disclaimer as well. The ‘501 patent was applied for before June 8, 1995, on December 15, 1994, and claimed priority to November 3, 1993. It issued on September 8, 1998. Twenty years from the priority date is November 13, 2013, and seventeen years from the issue date is September 8, 2015. The ‘501 patent expires September 8, 2015, after the ‘532 patent expires.

Therefore, regardless of whether '501 or '431 was named in the Terminal Disclaimer in '532, the life of the '532 patent extends until exactly November 3, 2013. That expiration date was not affected by the terminal disclaimer referring to the '431 patent and, furthermore, will not be affected by correcting the mistake.

The October 24, 2002, decision refusing to grant the requested certificate of correction was based on the erroneous conclusion that the requested change would alter the term of the patent. Since it would not alter the term, the request should now be granted.

The Decision Misstates and Misapplies the Relevant Law

It is submitted that without the above-noted error regarding the expiration date, the October 24, 2002, decision should have granted the requested certificate. Recognition of that should be enough to warrant granting of the petition at this time. Out of an abundance of caution, the patentee now also identifies other errors in the decision that would independently warrant relief.

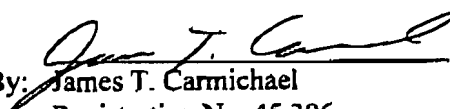
First, the October 24, 2002, decision accorded deference to the Certificate of Correction Branch under the "arbitrary and capricious" standard. However, that standard is only appropriate for a court in reviewing a final decision of the U.S. Patent and Trademark Office (PTO). See 5 U.S.C. §§ 701 *et seq.* It is not appropriate for an internal PTO decision. The PTO Office of Petitions owes no deference to the PTO Certificate of Corrections Branch. Furthermore, the "arbitrary and capricious" standard is not limited to an abuse of discretion as suggested in the decision but also encompasses an error of law. Even if the "arbitrary and capricious" standard were applicable, which it is not, it would be satisfied by the errors noted herein.

Second, the citation to the Commissioner's Decision in *In re Arnott*, 19 USPQ2d 1049 (Comm'r Pat. 1991) is inapposite. That case dealt only with changing the claim language in a patent, not the term. There is no reason to extend the Commissioner's rationale in that case to cover a change in term. In any event, since there is no change in term or claim language in the present case, *Arnott* has no possible relevance.

Any fees necessitated by this filing may be charged to Miles & Stockbridge Deposit Account No. 50-1165.

Respectfully submitted,

MILES & STOCKBRIDGE P.C.

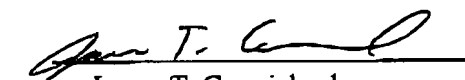
By:   
James T. Carmichael  
Registration No. 45,306

Dated: December 2, 2002

MILES & STOCKBRIDGE  
1751 Pinnacle Drive  
Suite 500  
McLean, Virginia 22102-3833  
Telephone: (703) 903-9000  
Facsimile: (703) 610-8686

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on December 2, 2002.

  
James T. Carmichael

PTO/SB/44 (02-01)

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## UNITED STATES PATENT AND TRADEMARK OFFICE

## CERTIFICATE OF CORRECTION

PATENT NO : 6,142,532

DATED : November 7, 2000

INVENTOR(S) : Adrian Gluck

It is certified that a typographical error appears in the Terminal Disclaimer filed on March 25, 1999, in the above-identified patent and that said Letters Patent are hereby corrected as shown below:

— Replace the reference to Patent No. "5,417,431" with Patent No. — 5,803,501 — in the Terminal Disclaimer documents on file, namely the Terminal Disclaimer filed March 25, 1999, and referred to in documents filed August 16, 1999, and January 20, 2000.

## MAILING ADDRESS OF SENDER:

Samuel B. Stone  
Lyon & Lyon  
633 W. Fifth Street, 47<sup>th</sup> Floor  
Los Angeles, CA. 90071  
(949) 567-2300

PATENT NO. 6,142,532

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## LAW OFFICES

**MILES & STOCKBRIDGE P.C.**

1751 PINNACLE DRIVE

SUITE 500

MCLEAN, VIRGINIA 22102

TELEPHONE: 703-903-9000

FAX: 703-610-8686

BALTIMORE, MD  
CAMBRIDGE, MD  
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EASTON, MD

121  
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**FACSIMILE COVER SHEET**

**TO: CHARLES STEVEN BRANTLEY, ESQ.**  
**OFFICE OF THE DEPUTY COMMISSIONER FOR PATENT EXAMINATION POLICY**  
**U.S. PATENT & TRADEMARK OFFICE**

**FAX NO.: 703-308-6916** **PHONE NO.: 703-306-5683**

**FROM: JAMES T. CARMICHAEL** **PHONE NO.: 703-610-8648**

**DATE: DECEMBER 2, 2002** **TIME:**

**FILE NO.: T3504-908133** **PAGES (INCLUDING COVER SHEET) 6**

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